

**Hearing Date and Time:**  
**April 25, 2019 at 10:00 a.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

**Objection Deadline Date and Time:**  
**April 18, 2019 at 4:00 p.m.**

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	:	
In re	:	Chapter 7
	:	
AMPAL-AMERICAN ISRAEL CORPORATION,	:	Case No. 12-13689 (SMB)
	:	
Debtor.	:	
	:	
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**NOTICE OF HEARING ON TRUSTEE'S MOTION FOR ORDER AUTHORIZING  
PAYMENT OF CERTAIN THIRD PARTY LITIGATION EXPENSES**

**PLEASE TAKE NOTICE** that a hearing (the “Hearing”) will be held before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, in Courtroom 723 of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), located at the Alexander Hamilton Custom House, One Bowling Green, New York, NY 10004-1408, on **April 25, 2019 at 10:00 a.m.**, or as soon thereafter as counsel can be heard (the “Hearing”), to consider the *Motion for an Order Authorizing Payment of Certain Third Party Litigation Expenses* (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that you do not need to appear at the Hearing if you do not object to the relief requested in the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

**PLEASE TAKE FURTHER NOTICE** that any objections, if any, to the Motion must be made in writing, state with particularity the grounds therefore, shall conform to the United States Bankruptcy Rules and the Local Rules of the Bankruptcy Court, include in the upper right

hand corner of the caption, the ECF docket number to which the filing relates, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-399 (with a courtesy copy delivered directly to the Chambers of Stuart M. Bernstein, United States Bankruptcy Judge, United States Bankruptcy Court, The Alexander Hamilton Custom House, One Bowling Green, Room 723, New York, NY 10004), and served upon (i) the Office of the United States Trustee, 201 Varick Street, Ste. 1006, New York, New York 10014; and (ii) upon special counsel for the Trustee, Akerman LLP, 666 Fifth Avenue, 20<sup>th</sup> Floor, New York, New York 10103 (Attn: John P. Campo, Esq.) together with proof of service thereof, so as to be received no later than **4:00 p.m. (Eastern Time) on April 18, 2019.**

**PLEASE TAKE FURTHER NOTICE** that unless responses are received by that time, the relief may be granted as requested in the Application.

Dated: New York, New York  
April 10, 2019

AKERMAN LLP

By: /s/John P. Campo  
John P. Campo  
666 Fifth Avenue, 20<sup>th</sup> Floor  
New York, New York 10103  
Tel. No. (212) 880-3800  
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*Special Counsel for the Trustee*

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**TRUSTEE'S MOTION FOR ORDER**  
**AUTHORIZING PAYMENT OF CERTAIN LITIGATION EXPENSES**

**TO THE HONORABLE STUART M. BERNSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE:**

Alex Spizz, in his capacity as chapter 7 trustee (the "Trustee") for the estate of Ampal-American Israel Corporation ("Ampal" or the "Debtor"), by and through undersigned counsel, submits this motion for an order authorizing payment of certain litigation expenses incurred and owed (or to be incurred) to third parties (the "Motion") pursuant to Section 331 and 105(a) of title 11 of the United States Code (the "Bankruptcy Code"). In support of the Motion, Akerman respectfully represents as follows:

**JURISDICTION**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§1408 and 1409.

2. The legal and statutory basis for relief requested herein are sections 105(a) and 331 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

## **BACKGROUND**

3. On August 29, 2012, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtor operated as a debtor-in-possession until April 8, 2013, when Michael Luskin was appointed as chapter 11 trustee for the Debtor's estate.

4. On or about May 2, 2013, the Debtor’s case was converted to a case under chapter 7 of the Bankruptcy Code, and on May 3, 2013, the Trustee was elected as chapter 7 trustee of the Debtor’s estate.

5. On August 27, 2014, the Trustee commenced an adversary proceeding in this chapter 7 case styled *Spizz v. Eluz, et al.*, Adv. Proc. No. 14-0211-smb (the “D&O Action”) against Irit Eluz (“Eluz”), the Debtor’s former Chief Financial Officer, and Yehuda Karni, Revital Degani, Menachem Morag and Daniel Vaknin, Ampal’s formers independent directors (the “Independent Directors,” and together with Eluz, collectively, the “Defendants”) alleging causes of action for, *inter alia*, breach of fiduciary duty.

## **RELIEF REQUESTED**

6. In connection with the D&O Action, the Trustee has incurred various third party litigation expenses, such as eDiscovery and court reporting. In addition, as the D&O Action goes forward towards trial, the Trustee expects to incur additional eDiscovery and court reporting fees, witness fees, and expert fees and costs. These third party litigation expenses (the "Third Party Expenses"), although certainly customary in litigation, are not the types of expenses that are usually incurred by law firms (such as postage and similar expenses) for which reimbursement is usually sought as part of a fee application (the "Typical Expenses").

7. Indeed, given the significant amount of money often involved, it is the standard practice of many law firms, including Akerman, to request that a client pay such Third Party

Expenses as incurred, rather than for the firm to outlay the costs of such expenses and then seek reimbursement for the same in subsequent fee applications.

8. The Trustee hereby seeks authority to reimburse Akerman (or pay directly) invoices for Third Party Expenses in connection with the D&O Action as those invoices are received, up to the aggregate amount of \$300,000.00 (the "Aggregate Amount"), without further order of the Court. This includes the Third Party Expenses listed herein.

9. The Trustee is requesting the Court to authorize the Trustee to pay directly the following invoices which have been incurred as of the date of this Motion.

**INVOICES FROM FRONTEO USA, INC.**

10. Fronteo USA, Inc. ("Fronteo") was engaged by Akerman, on behalf of the Trustee, to provide eDiscovery litigation support in the D&O Action. Pursuant to Fronteo's engagement, Fronteo has invoiced the Trustee the amount of \$149,813.10, as listed below. The Trustee requests authorization to pay these invoices as a litigation expense in the D&O Action.

INVOICE DATE	INVOICE NO.	INVOICE AMOUNT	CREDITS	TOTAL AMOUNT DUE
12/25/2018	GA000336	\$ 5,109.20		\$ 5,109.20
11/25/2018	INV00152	\$ 4,959.20		\$ 4,959.20
10/25/2018	180459	\$ 4,959.20		\$ 4,959.20
09/30/2018	178662	\$ 4,959.20		\$ 4,959.20
08/31/2018	177311	\$ 5,364.20		\$ 5,364.20
07/31/2018	176023	\$ 4,959.20		\$ 4,959.20
06/30/2018	175007	\$ 4,959.20		\$ 4,959.20
05/31/2018	173686	\$ 5,257.90		\$ 5,257.90
04/30/2018	172471	\$ 4,957.90		\$ 4,957.90
03/31/2018	170706	\$ 5,670.90		\$ 5,670.90
03/31/2018	171904	\$ 350.00		\$ 350.00
02/28/2018	169814	\$ 4,957.70		\$ 4,957.70
02/28/2018	170668	\$ 69,392.00	\$ (34,696.00)	\$ 34,696.00
02/20/2018	167618RB	\$ 74,965.00	\$ (37,482.50)	\$ 37,482.50
01/31/2018	168570	\$ 5,152.70		\$ 5,152.70

INVOICE DATE	INVOICE NO.	INVOICE AMOUNT	CREDITS	TOTAL AMOUNT DUE
12/31/2017	167326	\$ 5,927.70		\$ 5,927.70
11/30/2017	166209	\$ 4,957.70		\$ 4,957.70
10/31/2017	164632	\$ 7,042.70	\$ (7,042.70)	\$ -
09/30/2017	163483	\$ 5,132.70		\$ 5,132.70
<b>TOTAL:</b>				<b><u>\$ 149,813.10</u></b>

**INVOICES FROM VERITEXT CORPORATE SERVICES, INC.**

11. Veritext Corporate Services, Inc. (“Veritext”) was engaged by Akerman, on behalf of the Trustee, to provide court reporting and interpretation services for a two (2) day deposition of defendant Eluz in the D&O Action. Veritext has invoiced the Trustee the amount of \$11,144.05, as listed below. The Trustee requests authorization to pay these invoices as a litigation expense in the D&O Action.

INV. DATE	INV. NO.	AMOUNT	CREDITS	TOTAL DUE
12/05/18	CS3568906	\$ 2,939.39		\$ 2,939.39
12/07/18	CS3569253	\$ 1,098.00		\$ 1,098.00
12/07/18	CS3574893	\$ 3,873.66		\$ 3,873.66
12/13/18	CS3579861	\$ 1,150.00		\$ 1,150.00
12/17/18	CS3569255	\$ 1,098.00		\$ 1,098.00
12/17/18	CS3577845	\$ 985.00		\$ 985.00
			<b>TOTAL:</b>	<b>\$ 11,144.05</b>

12. The Trustee is also requesting authorization to pay any additional Third Party Expenses as they are incurred, provided that the Aggregate Amount is not exceeded without further order of the Court. Moreover, Akerman shall not advance any Third Party Expenses without the prior review and approval by the Trustee.

13. Given the nature and amount of the Third Party Expenses, the Trustee believes the arrangement proposed herein is appropriate and reasonable, and in the best interests of the Debtor's estate. *See In re That's Entertainment Marketing Group, Inc.*, 168 B.R. 226 (N.D.Cal.

1994) (employment of accounting firm by special counsel in litigation matter did not require prior court approval); *In re Olympia Holding Corp.*, 176 B.R. 962 (Bankr. M.D. Fla. 1994) (anticipated litigation expenses of special counsel allowed in full). *See also In re Cardinal Industries, Inc.*, 121 B.R. 518, 521 (Bankr. S.D. Ohio 1990) (court's jurisdiction under section 105(a) clearly extends to issues involving the payment of fees and reimbursement of expenses).

14. Akerman will file fee applications and requests for reimbursement of Typical Expenses in accordance with Sections 330 and 331 of the Bankruptcy Code.

**WHEREFORE**, the Trustee respectfully requests that this Court enter an order (a) allowing the direct payment of the Third Party Expenses listed herein in the amount of \$160,957.15; (b) allowing the Trustee to pay directly and/or reimburse Akerman for any Third Party Expenses to be incurred in connection with the D&O Action up to the aggregate amount of \$300,000.00, including the \$160,957.15 of Third Party Expenses listed herein; and (c) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York  
April 10, 2019

AKERMAN LLP

By: /s/John P. Campo  
John P. Campo  
666 Fifth Avenue, 20<sup>th</sup> Floor  
New York, New York 10103  
Tel. No. (212) 880-3800  
E-mail: [john.campo@akerman.com](mailto:john.campo@akerman.com)

*Special Litigation Counsel for the Trustee*

**EXHIBIT A**  
**PROPOSED ORDER**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re :  
AMPAL-AMERICAN ISRAEL CORPORATION, : Chapter 7  
Debtor. : Case No. 12-13689 (SMB)  
----- x

**ORDER ON TRUSTEE'S MOTION FOR ORDER  
AUTHORIZING PAYMENT OF CERTAIN THIRD PARTY LITIGATION EXPENSES**

Upon the Motion of Alex Spizz, as chapter 7 Trustee for the estate of Ampal-American Israel Corporation (the "Trustee"), for authority to pay certain third party litigation expenses (the "Third Party Expenses") incurred (or to be incurred) by the Trustee directly or through Akerman LLP ("Akerman"), in connection with the D&O Action (as term is defined in the motion) (the "Motion") [Doc. No. \_\_\_]; and notice of hearing having been given; and it appearing that no other notice need be given; and sufficient cause appearing therefore, it is hereby **ORDERED**:

1. That the Motion is **GRANTED**.
2. That the Trustee, without further order of the Court, is hereby authorized to pay directly and/or reimburse Akerman for any Third Party Expenses incurred in connection with the D&O Action, up to the Aggregate Amount (including the \$160,957.15 of Third Party Expenses listed in the Motion).
3. That the Trustee is hereby authorized to pay directly as a litigation expense, the Third Party Expenses listed in the Motion to Fronteo in the amount of \$149,813.10 and to Veritext in the amount of \$11,144.05.¶
4. That before Akerman pays any Third Party Expenses directly, such expense shall have been reviewed and approved by the Trustee.

5. This order is without prejudice to the Trustee's right to make further application to this Court to increase the Aggregate Amount, if necessary.

**NO OBJECTION:**

Dated: New York, New York  
April \_\_, 2019

UNITED STATES TRUSTEE, REGION 2

By: \_\_\_\_\_  
Andrew Velez-Rivera, Trial Attorney  
201 Varick Street, Ste. 1006  
New York, New York 10014  
Tel. No. (212) 510-0500

**Dated: New York, New York  
April \_\_, 2019**

\_\_\_\_\_  
**HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE**